

**26 JULY 1994**



**AIR FORCE MATERIEL COMMAND  
Supplement 1**

**29 MARCH 1996**

**Scientific/Research and Development**

**COOPERATIVE RESEARCH AND  
DEVELOPMENT AGREEMENTS**

**COMPLIANCE WITH THIS PUBLICATION IS MANDATORY**

---

**NOTICE:** This publication is available digitally on the SAF/AAD WWW site at: <http://afpubs.hq.af.mil>. If you lack access, contact your Publishing Distribution Office (PDO).

---

OPR: SAF/AQT (Dr C. J. Chatlynnne)  
Supersedes AFR 80-27, 31 January 1990.

Certified by: SAF/AQT (Col A. Michael Higgins)  
Pages: 20  
Distribution: F

---

This instruction establishes policies and procedures for executing cooperative research and development agreements (CRDA) between the Air Force and the public and private sector, including industry and academia. The instruction implements AFPD 61-3, *Domestic Technology Transfer; The Stevenson-Wydler Technology Innovation Act of 1980*; Executive Order 12591, *Facilitating Access to Science and Technology*, 10 April 1987; and DoD 3200.12-R-4, *Domestic Technology Transfer Regulation*, 27 December 1988.

---

(AFMC) This supplement implements AFPD 61-3, *Domestic Technology Transfer*. It does not apply to Air National Guard or Air Force Reserves. Units may further supplement this command supplement, as required. If supplemented, submit a copy to AFMC TTO/TTR, 4375 Chidlaw Road, Suite 6, Wright-Patterson AFB OH 45433-5006.

**AFI 61-302, 26 July 1994, is supplemented as follows:**

**SUMMARY OF REVISIONS**

This instruction updates, clarifies, and streamlines previous guidelines for CRDAs.

**1. Authorities:**

**1.1. Delegation of Authority.** Commanders and directors of Air Force activities may negotiate and enter into CRDAs on behalf of the Air Force with various organizations in the public and private sector.

**1.2. Review Authority for CRDAs.** SAF/AQT is the CRDA reviewing authority for non-Air Force Materiel Command (AFMC) activities, while the AFMC commander has this authority for AFMC activities. Delegation of review authority is covered in paragraph 2.2.

**1.3. Collaborating Parties.** The parties with which the Air Force may enter into CRDAs are:

- Other Federal agencies
- Units of state or local government
- Industrial organizations (for example, corporations, partnerships, limited partnerships, industrial development organizations)
- Public and private foundations
- Nonprofit organizations (including universities)
- Other persons (including licensees of inventions owned by the Air Force)

**1.4. Commander or Director Discretion.** When deciding what CRDAs to enter into, a commander or director has the right to accept, reject, or modify an offer, to perform an offer in whole or in part, or to take any other action necessary or advisable to protect the interests of the US Government. This discretion extends to the present or planned work of the laboratory. Except when the reviewing official disapproves or modifies the CRDA, the commander's or director's decisions regarding CRDAs are not subject to review or appeal.

**1.5. Criteria for Selecting CRDA Partners.** In considering whether to enter into a CRDA, a commander or director gives:

- Special consideration to small business firms and consortia involving small business firms.
- Preference to business units located in the United States that agree to substantially manufacture domestically those products that embody or are produced through inventions made under CRDAs.
- In the case of parties subject to the control of a foreign company or government, consideration to whether such a foreign government permits US agencies, organizations, or other persons to enter into CRDAs and licensing agreements.
- Consideration to export control regulations, policies governing militarily critical technology, or any other restrictions on international technology transfer control set forth in Department of Defense (DoD) and Air Force directives and instructions.

**1.6. Legal Counsel.** Before entering into any CRDA or license agreements, commanders or directors must get legal counsel, especially on intellectual property issues and on proprietary rights such as dispositions of inventions or patents or on inconsistency with conflict of interest statutes or regulations.

## **2. CRDA Review Process:**

**2.1. Review Authority.** The official to whom a commander or director (or designee) reports reviews all negotiated CRDAs. *Note: When a commander or director has designated a subordinate to negotiate and enter into CRDAs, the commander or director acts as the reviewing official.*

2.1.1. The reviewing official has authority to approve, disapprove, or require modification of any CRDA within 30 days, beginning on the date the reviewing official receives the CRDA in his or her office.

2.1.2. When the reviewing official disapproves or requires modification of an agreement, he or she sends a written explanation to the commander or director within the 30-day period of paragraph 2.1.1.

2.1.3. CRDAs not reviewed within 30 days of their receipt in the reviewing official's office become effective.

## 2.2. Delegation of Review Authority:

2.2.1. The AFMC commander may designate subordinate AFMC laboratory and center commanders and directors as reviewing officials for CRDAs executed by their activities or their subordinate activities.

2.2.2. SAF/AQ may give this authority to commanders and directors of activities outside AFMC.

## 3. Functions and Endeavors Allowed Under a CRDA:

**3.1. Resources.** Air Force organizations may accept, retain, and use resources from, and provide resources to, CRDA partners. These resources may be in the following categories:

From the Air Force Organization		From the CRDA Partner	
Personnel	Equipment	Personnel	Equipment
Services	Intellectual Property	Services	Intellectual Property
Facilities		Facilities	Funds

**3.1.1. (Added-AFMC)** Authority to accept, retain and use funds derived from CRDAs. The express authority in 15 U.S.C. 3710a(b)(1) to "accept, retain and use" funds received from a collaborating party under a CRDA, in combination with the spending authority granted in 15 U.S.C. 3714, provides an exception to the general prohibition on augmenting an appropriation by permitting a federal laboratory to retain funds received under a CRDA without violating the Miscellaneous Receipts Statute, 31 U.S.C. 3302(b).

**3.1.2. (Added-AFMC)** Receipt of CRDA income. CRDA income, other than royalty or other income from the licensing or assignment of inventions, is to be deposited under the servicing DAO/FSO (Defense Accounting Office/Financial Services Office) ADSN, into suspense account, 57F3875.CDA\*\*. The receiving DAO/FSOs will establish local suspense accounts 57F3875.ROY\*\* and 57F3875.CDA\*\* in their data base as fund type "K" records. Replace the asterisks in the fourth position of the limits with the fiscal year in which the money was received by the Air Force (example: 57F3875.CDA95). All checks for nonroyalty CRDA income should be sent directly to the servicing DAO/FSO by the payer. The agreement should not direct the payer to send the checks to the agreement participant (per DFAS-DE/PG Message 242357Z, May 91, Subject: Royalty and Cooperative Research and Development Agreement (CRDA) income).

**3.1.3. (Added-AFMC)** Limitations on use of CRDA income under 15 U.S.C. 3710a(b)(1). The funds may be used or obligated by appropriate documentation showing the withdrawal of the amount and commitment or obligation to the designated appropriation for the laboratory's usage. This could be research, development, testing, and evaluation (RDT&E), Operation and Maintenance (O&M), one of the procurements accounts, or Defense Business Operation Funds (DBOF).

DFAS has advised the Air Force that collections are available for obligation only until the end of the fiscal year in which the appropriation to which it is deposited expires for new obligations. (Memorandum for Deputy Director for General Accounting, Defense Finance and Accounting Service, April 19, 1994, Subject: Establishing Charges or Fees Under Cooperative Research and Development Agreements (CRDA) .)

**3.2. License Grants.** When the commander or director deems it appropriate, Air Force organizations may grant or agree in advance to grant to a CRDA partner patent licenses or assignments for any invention made in whole or in part by a Federal employee under the CRDA. The Government retains a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention or to have the invention practiced throughout the world by or on behalf of the Government, and other rights that the commander or director may deem appropriate.

**3.3. License Waivers.** Commanders and directors of Air Force organizations may waive in advance, in part or in whole, any right of Government ownership to a subject invention made under a CRDA by a collaborating party or employee of a collaborating party. This waiver is subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice the invention or to have the invention practiced throughout the world by or on behalf of the Government.

**3.4. Determination of Intellectual Property Rights.** Air Force activities may determine rights in intellectual property developed under a CRDA.

**3.5. Commercial Rights Permission.** Air Force activities may permit Federal employees or former Federal employees of the organization to participate in efforts to commercialize inventions that they made while in the employment or service of the United States. Such an arrangement must comply with Air Force requirements and standards of conduct.

**3.6. License Agreements.** Air Force activities may negotiate license agreements for intellectual property that inventors assign to the United States as represented by the Secretary of the Air Force. This intellectual property includes, and is limited to, Government-owned inventions made by or intellectual property developed at the Air Force activity under CRDAs. *Note: Agreements must comply with 35 U. S.C. 207, Patentability, Grant of Patents; AFI 51-303, Intellectual Property -- Patents, Trademarks, and Copyrights; and 61-303; and other authorities.*

#### **4. Scientific and Technical Information Requirements for Air Force Sponsors:**

**4.1. Collect Information.** Before entering into CRDAs, search the Defense Technical Information Center (DTIC) databases and the open literature in accordance with AFI 61-201, *The Local STINFO Process*.

**4.2. Summarize Information.** Submit and maintain a work-unit information summary for each CRDA in accordance with AFI 61-203, *The Work-Unit Information System*, and the collaborator's proprietary requirements.

**4.3. Submit Reports.** Ensure that industrial collaborators submit reports required by the CRDA Work Statement and send them to DTIC in accordance with AFI 61-202, *USAF Technical Publications Program*, and consistent with the proprietary requirements of the collaborator.

**29 MARCH 1996**

**5**

**4.4. Control Dissemination.** Follow AFI 61-204, *Dissemination of Scientific and Technical Information*, with regard to controlled information. (See attachment 3, paragraph 11.10.)

CLARK G. FIESTER

The Assistant Secretary of the Air Force for Acquisition

**Attachment 1****GLOSSARY OF REFERENCES, ABBREVIATIONS AND ACRONYMS, AND TERMS*****References***

AFI 51-303, *Intellectual Property -- Patents, Trademarks, and Copyrights*

AFI 61-201, *The Local STINFO Process*

AFI 61-202, *USAF Technical Publications Program*

AFI 61-204, *Dissemination of Scientific and Technical Information*

AFPD 61-3, *Domestic Technology Transfer*

AFI 61-301, *The Domestic Technology Transfer Process and the Offices of Research and Technology Application*

AFI 61-303, *Licensing Inventions Made under Cooperative Research and Development Agreements*

Public Law 96-480

The Stevenson-Wydler Technology Innovation Act of 1980 as amended

The Federal Technology Transfer Act of 1986

Executive Order 12591, *Facilitating Access to Science and Technology*

DoD 3200.12-R-4, *Domestic Technology Transfer Program*

35 U.S.C. 207, *Patentability, Grant of Patents*

***Abbreviations and Acronyms***

**AFMC**—Air Force Materiel Command

**CRDA**—Cooperative Research and Development Agreement

**DTIC**—Defense Technical Information Center

**GPL**—Government Purpose License

***Terms***

**Commanders and directors**—For the purpose of this instruction, includes the designee of the commander or director of an Air Force activity or organization.

**Created**—In relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. ¶ 101.

**Effective Date**—The earlier of (a) the date of the last signature of the duly authorized representatives of the parties and the reviewing official or (b) 30 days after the receipt of a signed copy of this agreement by the reviewing official without that official taking any action thereon.

**Government**—The Government of the United States of America.

**Government Purpose License**—A license to the Government conveying a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced an Invention for or on behalf of the

Government for Government purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States, and conveying the right to use, duplicate or disclose copyrighted works or Proprietary Information in whole or in part and in any manner, and to have or permit others to do so, for Government purposes. Government purposes include competitive procurement, but do not include the right to have or permit others to practice an invention or use, duplicate or disclose copyrighted works or Proprietary Information for commercial purposes.

**Invention**—Any invention or discovery that is or may be patentable or otherwise protected under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 7321 et seq.).

**Made**—In relation to any invention means the conception or first actual reduction to practice of such Invention.

**Proprietary Information**—Information that embodies trade secrets or that is confidential technical, business or financial information provided that such information:

1. is not generally known, or is not available from other sources without obligations concerning its confidentiality;
2. has not been made available by the owners to others without obligation concerning its confidentiality;
3. is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
4. can be withheld from disclosure under 15 U.S.C. 3710a(c)(7)(A) and (B) and the Freedom of Information Act, 5 U.S.C. 552 et seq.; and
5. is identified as such by labels or markings designating the information as proprietary.

**Reviewing Official**—The authorized representative of the Department of the Air Force who is identified on the signature page of the Agreement.

## Attachment 2

### GUIDELINES FOR USING THE AIR FORCE MODEL CRDA

**A2.1. Purpose of the Model.** The Air Force has formulated the Model CRDA to minimize the amount of composition a preparer must do to construct an effective CRDA. The Model CRDA provides a recommended format and specific terms and conditions consistent with law, regulation, and policy.

#### **A2.2. Guidelines for Preparation:**

**A2.2.1. CRDA Number.** The CRDA number contains a two-digit fiscal year designation, a two-letter Air Force Laboratory designation, and a two-digit serial number (for example, 93-WL-01). The office of primary responsibility (OPR) for CRDAs, which is the local Office of Research and Technical Application (ORTA) at each installation, assigns the number.

**A2.2.1. (AFMC)** Add a descriptive title to the CRDA (limit title to 254 characters).

**A2.2.2. Caption and Title.** Enter the name of the Air Force activity and corporate names of collaborators.

**A2.2.3. Article 1: Preamble.** Enter:

- The name and address of the collaborating party.
- The name, functional address symbol, and address of the participating Air Force organization.

#### **NOTE:**

The model CRDA refers to the collaborating party as the Collaborator and to the participating Air Force organization as the Air Force Activity. Use these terms in the CRDA. In CRDAs with more than two collaborators, modify the articles accordingly. You may also substitute the actual names of the Air Force Activity and the Collaborator.

**A2.2.4. Article 2: Definitions.** The definitions article establishes the meanings of specified terms to be consistent with Federal laws and regulations. Use the definitions exactly as they appear in the model. When necessary, you may include definitions for additional terms.

**A2.2.5. Article 3: Work Statement.** This describes the nature and scope of the work performed under this agreement. It details requirements for equipment, maintenance and other support, and reporting.

**A2.2.6. Article 4: Financial Obligations.** State the Collaborator's funding obligations and identify the Air Force Activity's financial office and address to which the collaborator should send payments.

A2.2.6.1. For payments resulting from Article 4, paragraph 4.1. or paragraph 4.2., enter the Air Force activity's organization symbol and financial office address (for example, HQ ASC/AFO, Wright-Patterson AFB, OH 45433-5000).

A2.2.6.2. Comply with the patents article in granting royalty or other income from the licensing of patents.

**A2.2.7. \*\*Article 5: Patents.** This article sets out the disposition of rights with respect to ownership, filing of patent applications, and granting of licenses in inventions made under the CRDA. For any proposed CRDA that could result in an invention, include this article exactly as written. HQ



AFLSA/JACP, JACPD or JACPB prepares any patent license agreement under Article 5, paragraph 5.2. (See AFI 61-303.)

**A2.2.8. \*\*Article 6: Copyrights.** This article sets out the disposition of rights with respect to ownership and granting of licenses in copyrightable works created under the CRDA. The royalty percentages set out in this article are suggested rates; you may change them on a case-by-case basis. Otherwise, include this article exactly as written.

**A2.2.9. \*\*Article 7: Proprietary Information.** If the proposed CRDA involves proprietary information, include provisions for its protection (15 U.S.C. 3710a(c)(7)). Include this article exactly as written. See Article 2 for a definition of proprietary information.

**\*\* Note: Any CRDA that includes rights in any background intellectual property (that is, patents, copyrights, and proprietary information) may require additional clauses in the CRDA, separate license agreements, or both.** Coordinate any changes to the patents, copyrights, or proprietary information articles with Air Force Patent Counsel.

**A2.2.10. Article 8: Term, Modification, Extension, Termination, and Disputes.** Enter the term of the proposed CRDA in the first paragraph of this article. Otherwise, copy the article exactly as written.

**A2.2.11. Article 9: Representations and Warranties.** This article sets out certain representations and warranties by the parties. Tailor the representations and warranties of the collaborator as appropriate in consideration of the identity of the collaborator.

**A2.2.12. Article 10: Liability.** This article sets out the liability of the Government for injury to persons or property in the course of work under the CRDA. Prominently display the "No Warranty" clause (using bold type or all caps, for example) to meet uniform commercial code requirements that you duly notify parties of any disclaimers. Include this article exactly as written.

**A2.2.13. Article 11: General Terms and Provisions.** This Article sets out various miscellaneous contract provisions required for the proposed CRDA. Include this article exactly as written.

**A2.2.14. Article 12: Notices.** Enter the names and addresses of the persons who are to receive notices under the CRDA related to formal contract matters and technical matters.

**A2.2.15. Signatures.** The Air Force activity commander, director, or other authorized person and an authorized representative of the collaborator sign the CRDA. (The Air Force reviewing official may approve, disapprove, or require modification to the CRDA within 30 days of receipt of a signed agreement.)

**A2.2.16. Appendix A: Work Statement.** This lists the requirements and suggested format.

**A2.2.16. (AFMC)** If available, list the estimated dollar value of the investment that each (Air Force and outside partner) plans to make to complete the transfer agreement. The estimate should include the cost of contributed man-hours, facilities, computer support, and any other quantifiable factor. This information directly feeds the Command Transfer Metrics. Report Control Symbol (RCS): MTC-ST(AR)9501, Science and Technology Mission Element Metrics applies.

## MODEL COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

USAF CRDA NUMBER \_\_\_\_\_

## USAF COOPERATIVE RESEARCH AND DEVELOPMENT AGREEMENT

## BETWEEN

[INSERT NAME OF AIR FORCE ACTIVITY]

## AND

[INSERT NAME OF COLLABORATOR]

**Article 1. Preamble**

1.1 This Cooperative Research and Development Agreement ( *Agreement*) for performing the work described in the Work Statement attached hereto as Appendix A is entered into pursuant to 15 U.S.C. ¶ 3710a (as amended) and Air Force Policy Directive 61-3 by and between [Insert name of collaborator], (hereinafter referred to as " *Collaborator*"), located at [Insert address of collaborator], and the United States of America as represented by the Department of the Air Force, ( [Insert name of Air Force activity]), (hereinafter referred to as the " *Air Force Activity*"), located at \_\_\_\_\_ Air Force Base, ( State). The terms and conditions of this *Agreement* are set forth as follows.

**Article 2. Definitions**

2.1 As used in this *Agreement*, the following terms shall have the following meanings and such meanings shall be applicable to both the singular and plural forms of the terms:

2.2 " *Created*" in relation to any copyrightable work means when the work is fixed in any tangible medium of expression for the first time, as provided for at 17 U.S.C. ¶ 101.

2.3 " *Effective Date*" means the earlier of: (a) the date of the last signature of the duly authorized representatives of the parties and the *Reviewing Official*; or (b) 30 days after the receipt of a signed copy of this *Agreement* by the *Reviewing Official* without that official taking any action thereon.

2.4 " *Government*" means the Government of the United States of America.

2.5 " *Government Purpose License*" or " *GPL*" means a license to the *Government* conveying a nonexclusive, irrevocable, worldwide, royalty-free license to practice and have practiced an *Invention* for or on behalf of the *Government* for government purposes and on behalf of any foreign government or international organization pursuant to any existing or future treaty or agreement with the United States, and conveying the right to use, duplicate or disclose copyrighted works or *Proprietary Information* in whole or in part and in any manner, and to have or permit others to do so, for Government purposes. Government

purposes include competitive procurement, but do not include the right to have or permit others to practice an *Invention* or use, duplicate or disclose copyrighted works or *Proprietary Information* for commercial purposes.

2.6 " *Invention*" means any invention or discovery that is or may be patentable or otherwise protected under Title 35 of the United States Code or any novel variety of plant which is or may be protectable under the Plant Variety Protection Act (7 U.S.C. ¶ 7321 et seq.).

2.7 " *Made*" in relation to any *Invention* means the conception or first actual reduction to practice of such *Invention*.

2.8 " *Proprietary Information*" means information which embodies trade secrets or which is confidential technical, business or financial information provided that such information:

- i) is not generally known, or is not available from other sources without obligations concerning its confidentiality;
- ii) has not been made available by the owners to others without obligation concerning its confidentiality;
- iii) is not described in an issued patent or a published copyrighted work or is not otherwise available to the public without obligation concerning its confidentiality; or
- iv) can be withheld from disclosure under 15 U.S.C. ¶ 3710a(c)(7)(A) & (B) and the Freedom of Information Act, 5 U.S.C. ¶ 552 et seq.; and
- v) is identified as such by labels or markings designating the information as proprietary.

2.9 " *Reviewing Official*" means the authorized representative of the Department of the Air Force who is identified on the signature page of this *Agreement*.

2.10 " *Under*" as used in the phrase " *Under this Agreement*" means within the scope of work performed under this *Agreement*.

### **Article 3. Work Statement**

3.1 Appendix A sets forth the nature and scope of the work performed *Under this Agreement*, including any equipment, maintenance and other support, and any associated reporting requirements.

3.2 The *Collaborator* may inspect *Government* property identified in Appendix A prior to use. Such property may be repaired or modified at the *Collaborator's* expense only after obtaining the written approval of the *Air Force Activity*. Any repair or modification of the property shall not affect the title of the *Government*. Unless *Air Force Activity* hereafter otherwise agrees, the *Collaborator* shall, at no expense to the *Air Force Activity*, return all *Government* property after termination or expiration of this *Agreement* in the condition in which it was received, normal wear and tear excepted.

3.3 The parties agree to confer and consult with each other prior to publication or other public disclosure of the results of work *Under this Agreement* to ensure that no *Proprietary Information* or military critical

technology or other controlled information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each party will offer the other party ample opportunity to review such proposed publication or disclosure, to submit objections, and to file applications for patents in a timely manner.

#### **Article 4. Financial Obligations**

4.1 The *Collaborator* will pay the *Air Force Activity* the amount of \$ \_\_\_\_\_ within 30 days after the *Effective Date* hereof. Subsequent payments will be paid as follows: \_\_\_\_\_.

4.2 Payments from copyrights shall be payable by the *Collaborator* to the *Air Force Activity* in accordance with the provisions of Article 6.

4.3 Except as provided for in paragraph 4.4., payments by the *Collaborator* to the *Air Force Activity* under this Article shall be made payable to the *Air Force Activity* and mailed to the following address:

[Insert appropriate *Air Force Activity's* accounting office FAS], Air Force Base, (State, ZIP).

4.4 Royalty or other income from patents shall be payable in accordance with any patent license under Article 5.

#### **Article 5. Patents**

5.1 **Disclosure of Inventions.** Each party shall report to the other party, in writing, each *Invention Made Under this Agreement*, promptly after the existence of each such *Invention*, in the exercise of reasonable diligence, becomes known.

5.2 **Rights in Inventions.** Each party shall separately own any *Invention Made* solely by its respective employees *Under this Agreement*. *Inventions Made* jointly by the *Air Force Activity* and the *Collaborator* employees shall be jointly owned by both parties. The *Collaborator* shall have an option under 15 U.S.C. 3710a(b)(2) to obtain an exclusive or non-exclusive license at a reasonable royalty rate, subject to the retention of a *GPL* by the *Government*, in any *Invention Made* by the *Air Force Activity* employees *Under this Agreement*. The *Collaborator* shall exercise the option to obtain a license by giving written notice thereof to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1. The royalty rate and other terms and conditions of the license shall be set forth in a separate license agreement and shall be negotiated promptly after notice is given. The *Collaborator* hereby grants to the *Government*, in advance, a *GPL* in any *Invention Made* by the *Collaborator* employees *Under this Agreement*.

5.3 **Filing Patent Applications.** The *Collaborator* shall have the first option to file a patent application on any *Invention Made Under this Agreement*, which option shall be exercised by giving notice in writing to the *Air Force Activity* within three (3) months after disclosure of the *Invention* under paragraph 5.1, and by filing a patent application in the U.S. Patent and Trademark Office within six (6) months after written notice is given. If the *Collaborator* elects not to file or not to continue prosecution of a patent application

on any such *Invention* in any country or countries, the *Collaborator* shall notify the *Air Force Activity* thereof at least three (3) months prior to the expiration of any applicable filing or response deadline, priority period or statutory bar date. In any country in which the *Collaborator* does not file, or does not continue prosecution of, or make any required payment on, an application on any such *Invention*, the *Air Force Activity* may file, or continue prosecution of, or make any required payment on, an application, and the *Collaborator* agrees, upon request by the *Air Force Activity*, to assign to the *Government* all right, title and interest of the *Collaborator* in any such application and to cooperate with the *Air Force Activity* in executing all necessary documents and obtaining cooperation of its employees in executing such documents related to such application. The party filing an application shall provide a copy thereof to the other party. ***Note: Any patent application filed on any Invention Made Under this Agreement shall include in the patent specification thereof the statement: "This invention was made in the performance of a cooperative research and development agreement with the Department of the Air Force.*** The invention may be manufactured and used by or for the Government of the United States for all government purposes without the payment of any royalty."

**5.4 Patent Expenses.** Unless otherwise agreed, the party filing an application shall pay all patent application preparation and filing expenses and issuance, post issuance and patent maintenance fees associated with that application.

## **Article 6. Copyrights**

6.1 The *Collaborator* shall own the copyright in all works *Created* in whole or in part by the *Collaborator Under this Agreement*, which are copyrightable under Title 17, United States Code. The *Collaborator* shall mark any such works with a copyright notice showing the *Collaborator* as an owner and shall have the option to register the copyright at the *Collaborator's* expense.

6.2 The *Collaborator* hereby grants in advance to the *Government* a GPL in all copyrighted works *Created Under this Agreement*. The *Collaborator* will prominently mark each such copyrighted work subject to the *GPL* with the words: "This work was created in the performance of a Cooperative Research and Development Agreement with the Department of the Air Force. The Government of the United States has a royalty-free Government purpose license to use, duplicate or disclose the work, in whole or in part and in any manner, and to have or permit others to do so, for Government purposes."

6.3 The *Collaborator* shall furnish to the *Air Force Activity*, at no cost to the *Air Force Activity*, three (3) copies of each work *Created* in whole or in part by the *Collaborator Under this Agreement*.

6.4 The *Collaborator* shall pay to the *Air Force Activity* twenty percent (20%) of all gross income received by the *Collaborator* or its affiliates from the sale, lease or rental of any copyrighted work *Created Under this Agreement*. The *Collaborator* shall pay to the *Air Force Activity* fifty percent (50%) of all gross income or royalties received by the *Collaborator* or its affiliates from the licensing or assignment of any copyrighted work *Created Under this Agreement*. Any sale, lease or rental to *Government* shall not be subject to payments hereunder and shall be discounted in price by a corresponding amount. All such payments to the *Air Force Activity* shall be due and paid on or before the last day of the month next following receipt by the *Collaborator* of any such gross income or gross royalties. The *Collaborator*

shall provide to the *Air Force Activity* a report at least annually showing all gross income and royalties received. The *Collaborator* shall make payments due hereunder to the *Air Force Activity* in accordance with paragraph 4.3. of this *Agreement*. The *Collaborator's* obligation to make payments to the *Air Force Activity* hereunder shall survive expiration or other termination of this *Agreement*.

6.5 The *Air Force Activity*, at its expense, may require an accounting of income received by the *Collaborator* and its affiliates and may, at reasonable times and upon reasonable notice to the *Collaborator*, examine the *Collaborator's* and any affiliate's books and records to verify the accounting.

## **Article 7. Proprietary Information**

7.1 Neither party to this *Agreement* shall deliver to the other party any *Proprietary Information* not developed *Under this Agreement*, except with the written consent of the receiving party. Unless otherwise expressly provided in a separate document, such *Proprietary Information* shall not be disclosed by the receiving party except under a written agreement of confidentiality to employees and contractors of the receiving party who have a need for the information in connection with their duties *Under this Agreement*.

7.2 *Proprietary Information* developed *Under this Agreement* shall be owned by the developing party, and any jointly developed *Proprietary Information* shall be jointly owned. *Government* shall have a GPL to use, duplicate and disclose, in confidence, and to authorize others to use, duplicate and disclose, in confidence, for government purposes, any such *Proprietary Information* developed solely by the *Collaborator*. The *Collaborator* may use, duplicate and disclose, in confidence, and authorize others on its behalf to use, duplicate and disclose, in confidence, any such *Proprietary Information* developed solely by the *Air Force Activity*. *Proprietary Information* developed *Under this Agreement* shall be exempt from the Freedom of Information Act, 5 U.S.C. ¶ 552 et seq., as provided at 15 U.S.C. ¶ 3710a(c)(7)(A) & (B). The exemption for *Proprietary Information* developed jointly by the parties or solely by the *Air Force Activity* shall expire not later than five years from the date of development of such *Proprietary Information*.

## **Article 8. Term, Modification, Extension, Termination and Disputes**

8.1 **Term and Extension.** The term of this *Agreement* is for a period of ( ) months, commencing on the *Effective Date* of this *Agreement*. This *Agreement* shall expire at the end of this term unless both parties hereto agree in writing to extend it further. Expiration of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to expiration.

8.2 **Modification.** Any modifications shall be by mutual written agreement signed by the parties' representatives authorized to execute this *Agreement* and attached hereto. A copy of any modifications will be forwarded to the *Reviewing Official* for information purposes.

8.3 **Termination.** Either party may terminate this *Agreement* for any reason upon delivery of written notice to the other party at least three (3) months prior to such termination. Termination of this *Agreement* shall not affect the rights and obligations of the parties accrued prior to the date of termination of this *Agreement*. In the event of termination by either party, each party shall be responsible for its own costs incurred through the date of termination, as well as its own costs incurred after the date of termination and

which are related to the termination. If the *Air Force Activity* terminates this *Agreement*, it shall not be liable to the *Collaborator* or its contractors or subcontractors for any costs resulting from or related to the termination, including, but not limited to, consequential damages or any other costs.

**8.4 Disputes.** All disputes arising out of, or related to, this *Agreement* shall be resolved in accordance with this Article.

8.4.1 The parties shall attempt to resolve disputes between themselves. Any dispute which is not disposed of by agreement of the parties shall be referred to the *Reviewing Official* for decision.

8.4.2 *Reviewing Official.* The *Reviewing Official* shall within sixty (60) days of the receipt of the dispute, notify the parties of the decision. This decision shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, either party submits to the *Reviewing Official*, a written appeal addressed to the Secretary of the Air Force.

8.4.3 Secretary of the Air Force. The decision of the Secretary of the Air Force, or the Secretary's duly authorized representative, on the appeal shall be final and conclusive.

8.5 Continuation of Work. Pending the resolution of any such dispute, work under this *Agreement* will continue as elsewhere provided herein.

## **Article 9. Representations and Warranties**

9.1 The *Air Force Activity* hereby represents and warrants to the *Collaborator* as follows:

9.1.1 **Mission.** The performance of the activities specified by this *Agreement* are consistent with the mission of the *Air Force Activity*.

9.1.2 **Authority.** All prior reviews and approvals required by regulations or law have been obtained by the *Air Force Activity* prior to the execution of the *Agreement*. The *Air Force Activity* official executing this *Agreement* has the requisite authority to do so.

9.1.3 **Statutory Compliance.** The *Air Force Activity*, prior to entering into this *Agreement*, has (1) given special consideration to entering into cooperative research and development agreements with small business firms and consortia involving small business firms; (2) given preference to business units located in the United States which agree that products embodying an *Invention Made* under this *Agreement* or produced through the use of such *Invention* will be manufactured substantially in the United States; and (3) taken into consideration, in the event this *Agreement* is made with an industrial organization or other person subject to the control of a foreign company or government, whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements with such foreign country.

9.2 The *Collaborator* hereby represents and warrants to the *Air Force Activity* as follows:

**9.2.1 Corporate Organization.** The *Collaborator*, as of the date hereof, is a corporation duly organized, validly existing and in good standing under the laws of the State of [insert state], and ( if applicable) is a wholly owned subsidiary of [insert parent corp name], a [insert state] corporation.

**9.2.2 Statement of Ownership.** The *Collaborator* ( is) ( is not) a foreign owned or a subsidiary of a foreign-owned entity. The *Collaborator* has the right to assignment of all *Inventions Made* and copyrightable works *Created* by its employees *Under this Agreement*.

**9.2.3 Authority.** The *Collaborator* official executing this *Agreement* has the requisite authority to enter into this *Agreement* and the *Collaborator* is authorized to perform according to the terms thereof.

## **Article 10. Liability**

**10.1 Property.** All property is to be furnished "as is." No party to this *Agreement* shall be liable to any other party for any property of that other party consumed, damaged or destroyed in the performance of this *Agreement*, unless it is due to the gross negligence or willful misconduct of the party or an employee or agent of the party.

**10.2 Collaborator Employees.** The *Collaborator* agrees to indemnify and hold harmless and defend the *Government*, its employees and agents, against any liability or loss for any claim made by an employee or agent of the *Collaborator*, or persons claiming through them, for death, injury, loss or damage to their person or property arising in connection with this *Agreement*, except to the extent that such death, injury, loss or damage arises solely from the negligence of the *Air Force Activity* or its employees.

**10.3 NO WARRANTY.** EXCEPT AS SPECIFICALLY STATED IN ARTICLE 9, OR IN A LATER *AGREEMENT*, THE PARTIES MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE, OR DEVELOPED *UNDER THIS AGREEMENT*, OR THE MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY INVENTION OR PRODUCT. THE PARTIES FURTHER MAKE NO WARRANTY THAT THE USE OF ANY INVENTION OR OTHER INTELLECTUAL PROPERTY OR PRODUCT CONTRIBUTED, MADE OR DEVELOPED *UNDER THIS AGREEMENT* WILL NOT INFRINGE ANY OTHER UNITED STATES OR FOREIGN PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT. IN NO EVENT WILL ANY PARTY BE LIABLE TO ANY OTHER PARTY FOR COMPENSATORY, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES.

**10.4 Other Liability.** The *Government* shall not be liable to any other party to this *Agreement*, whether directly or by way of contribution or indemnity, for any claim made by any person or other entity for personal injury or death, or for property damage or loss, arising in any way from this *Agreement*, including, but not limited to, the later use, sale or other disposition of research and technical developments, whether by resulting products or otherwise, whether made or developed *Under this Agreement*, or whether contributed by either party pursuant to this *Agreement*, except as provided under the Federal Tort Claims Act (28 U.S.C. ¶¶ 2671 et seq.) or other Federal law where sovereign immunity has been waived.



## Article 11. General Terms and Provisions

**11.1 Disposal of Toxic or Other Waste.** The *Collaborator* shall be responsible for the removal and disposal from the *Air Force Activity* property of any and all toxic or other material provided or generated by the *Collaborator* in the course of performing this *Agreement*. The *Collaborator* shall obtain at its own expense all necessary permits and licenses as required by local, state, and Federal law and regulation and shall conduct such removal and disposal in a lawful and environmentally responsible manner.

**11.2 Force Majeure.** Neither party shall be in breach of this *Agreement* for any failure of performance caused by any event beyond its reasonable control and not caused by the fault or negligence of that party. In the event such a force majeure event occurs, the party unable to perform shall promptly notify the other party and shall in good faith maintain such part performance as is reasonably possible and shall resume full performance as soon as is reasonably possible.

**11.3 Relationship of the Parties.** The parties to this *Agreement* and their employees are independent contractors and are not agents of each other, joint venturers, partners or joint parties to a formal business organization of any kind. Neither party is authorized or empowered to act on behalf of the other with regard to any contract, warranty or representation as to any matter, and neither party will be bound by the acts or conduct of the other. Each party will maintain sole and exclusive control over its own personnel and operations.

**11.4 Publicity/Use of Name Endorsement.** Any public announcement of this *Agreement* shall be coordinated between the *Collaborator*, the *Air Force Activity* and the public affairs office supporting the *Air Force Activity*. The *Collaborator* shall not use the name of the *Air Force Activity* or the *Government* on any product or service which is directly or indirectly related to either this *Agreement* or any patent license or assignment which implements this *Agreement* without the prior written approval of the *Air Force Activity*. By entering into this *Agreement*, the *Air Force Activity* or the *Government* does not directly or indirectly endorse any product or service provided, or to be provided, by *Collaborator*, its successors, assignees, or licensees. The *Collaborator* shall not in any way imply that this *Agreement* is an endorsement of any such product or service.

**11.5 No Benefits.** No member of, or delegate to the United States Congress, or resident commissioner, shall be admitted to any share or part of this *Agreement*, nor to any benefit that may arise therefrom; but this provision shall not be construed to extend to this *Agreement* if made with a corporation for its general benefit.

**11.6 Governing Law.** The construction, validity, performance and effect of this *Agreement* for all purposes shall be governed by the laws applicable to the *Government*.

**11.7 Waiver of Rights.** Any waiver shall be in writing and provided to all other parties. Failure to insist upon strict performance of any of the terms and conditions hereof, or failure or delay to exercise any rights provided herein or by law, shall not be deemed a waiver of any rights of any party hereto.

**11.8 Severability.** The illegality or invalidity of any provisions of this *Agreement* shall not impair, affect or invalidate the other provisions of this *Agreement*.

**11.9 Assignment.** Neither this *Agreement* nor any rights or obligations of any party hereunder shall be assigned or otherwise transferred by any party without the prior written consent of all other parties.

**11.10 Controlled Information.** The parties understand that information and materials provided pursuant to or resulting from this *Agreement* may be export controlled, classified, or unclassified sensitive and protected by law, executive order or regulation. Nothing in this *Agreement* shall be construed to permit any disclosure in violation of those restrictions.

## **Article 12. Notices**

12.1 Notices, communications, and payments specified in this agreement shall be deemed made if given and addressed as set forth below.

A. Send formal notices under this agreement by prepaid certified US mail and address them:

*Air Force Activity:*  
Address

Attn: (ORTA)

*Collaborator:*  
Address

Attn:

B. Send correspondence on technical matters by prepaid ordinary US mail and address them:

*Air Force Activity:*  
Address

Attn:

*Collaborator:*  
Address

Attn:

IN WITNESS WHEREOF, the Parties have executed this agreement in duplicate through their duly authorized representatives as follows:

COLLABORATING PARTY

AIR FORCE ACTIVITY

---

(Name of Collaborating Activity)

---

(Name of Air Force Activity)

---

(Name of Official--Printed or Typed)

---

(Name of Official--Printed or Typed)

---

(Signature of Official)

---

(Signature of Official)

---

(Title of Official)

---

(Title of Official)

---

(Address of Official)

---

(Address of Official)

---

(Date Signed)

---

(Date Signed)

REVIEWED AND APPROVED BY AIR FORCE REVIEWING OFFICIAL:

---

(Name of Air Force Reviewing Official--Printed or Typed)

---

(Title--Printed or Typed)

---

(Signature)

---

(Date)

### **Appendix A: Work Statement**

NOTES: This is an essential part of the CRDA and should be completed first. It should:

\_\_\_\_ Describe the scope of work in technical terms.

\_\_\_\_ Specify each party's research and development responsibilities.

\_\_\_\_ Detail each party's contribution of funds, personnel, services, property, equipment, and facilities.

\_\_\_\_ State each party's division of responsibilities for reporting progress and results.

\_\_\_\_ Identify the principal investigators for each party, the milestones for work progress, and the procedures for interaction between parties.

\_\_\_\_ Identify each party's background intellectual property rights and environmental, health, and safety responsibilities. This is particularly important if the CRDA may call for an exchange of materials, equipment, or facility use.

Include proprietary information (if any) in a separate, appropriately marked document.

### **Suggested Format:**

1.0 Title. Provide a descriptive title of the CRDA.

2.0 Objective: State the overall purpose of the CRDA, including a short description of benefits anticipated for the Government and the collaborating party. Indicate the thrust of the outcome, whether it is a product, process, facility, or personnel.

3.0 Background: Include any pertinent historical information related to the proposed CRDA. State each party's background intellectual property rights in either party and each party's responsibilities regarding health, safety, and environmental protection.

4.0 Technical Tasks: This section may include the following parts.

4.1 *Collaborator*: Describe the tasks that the *Collaborator* is to do and describe and estimate the value of the resources it is to provide in the form of funds, personnel, services, property, and equipment.

4.2 *Air Force Activity*: Describe the tasks that the *Air Force Activity* is to do and describe and estimate the value of the resources it is to provide in the form of personnel, services, property, and equipment.

5.0 Deliverables or Desired Benefits: This section may include the following.

5.1 Benefits to the Collaborating Party: Describe what the collaborating party hopes to accomplish and how the collaborating party plans to benefit, directly or indirectly, from the CRDA.

5.2 Benefits to the Government: Describe how the Government will benefit directly or indirectly from the CRDA.

6.0 Other: Give any other pertinent information that would help both parties understand their respective roles in the CRDA.

7.0 Milestones: Give the dates each party is expected to complete its tasks.

8.0 Reports: List the reports each party is to generate and give a schedule for their completion. Parties should prepare and submit written progress reports at least every 6 months, and a final report within 2 months after the CRDA or work under the CRDA ends. Parties should coordinate the formats.